

STATE OF MICHIGAN
COURT OF APPEALS

DAVID A. ALLEMON and ANDREA G.
ALLEMON,

UNPUBLISHED
January 21, 2014

Petitioners-Appellants,

v

ROSE TOWNSHIP,

No. 313119
Tax Tribunal
LC No. 00-429216

Respondent-Appellee.

DAVID A. ALLEMON and ANDREA G.
ALLEMON,

Petitioners-Appellants,

v

ROSE TOWNSHIP,

No. 315306
Tax Tribunal
LC No. 00-440026

Respondent-Appellee.

Before: SAAD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

In this consolidated appeal, petitioners challenge two separate orders of the Michigan Tax Tribunal (MTT). In Docket No. 313119, petitioners challenge the finding that their Tipsico Lake property had a true cash value (TCV) of \$231,000 in tax year 2011 and \$225,390 in tax year 2012. In Docket No. 315306, petitioners challenge the finding that their Milford Road property had a TCV of \$140,000 in the tax year 2012. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

A. THE TIPSICO LAKE PROPERTY

Petitioners filed a small claims petition with the MTT, on property located at 20015 Tipsico Lake Rd, Holly, claiming that the 2011 and 2012 TCV were incorrect. The previously assessed TCVs were \$388,800 and \$300,000, respectively. Petitioners suggested that the 2011

TCV was \$140,822 and for 2012 it was \$229,600. They pointed to the numerous problems with the property, including: black mold, unlevel foundation, leaky roof, and a missing air conditioner unit. The home also needed substantial plumbing repair and new windows. Respondent argued that the TCV for both 2011 and 2012 was \$260,000, which represented a significant reduction in the original assessments to adequately reflect reductions for mold and other problems. Prior to the hearing before the referee, petitioners successfully moved to preclude consideration of the valuation disclosure submitted by respondent because it was not timely filed. Following the hearing, the referee recommended that the TCV be assessed at \$231,000 for tax year 2011 and \$260,000 for tax year 2012, concluding that the best evidence of the TCV of the property was the 2011 appraisal, respondent's subject record card and comparables.

Petitioners filed written exceptions, complaining that the TCV of \$260,000 for 2012 was taken from the valuation of disclosure that that was previously ruled untimely. Petitioners believed that the property was worth what they paid for it in cash – \$160,000 – minus the costs to repair the property.

The MTT first concluded that the referee erred by taking respondent's valuation disclosure into consideration. However, that did not necessarily mean that petitioners' valuations controlled. The MTT ordered that the TCV for tax year 2011 was \$231,000 (as recommended by the referee) and the TCV for tax year 2012 was \$225,390 (which was \$34,000 less than the referee's recommendation). The MTT denied petitioners' motion for reconsideration.

Petitioners filed their claim of appeal on October 31, 2012.

B. THE MILFORD ROAD PROPERTY

Petitioners also filed a small claims petition with the MTT for property located at 10905 Milford Road, Holly, claiming that the 2012 assessed TCV was incorrect. The TCV was assessed at \$140,000 but petitioners believed that the fair market value was \$117,710.

Following a hearing, the referee concluded that the Craig's List postings submitted by petitioners were not reliable indicators of the TCV of the property. The referee also rejected petitioners' comparables, which were either short sales or significantly inferior to the subject property. Nor was a 2010 appraisal a reliable indicator of value because the appraisal was prepared two years prior. The referee further found that petitioners failed to provide sufficient evidence that the neighboring property negatively impacted the subject property. The referee concluded that respondent's 2011 sales comparables supported the assessed TCV.

Petitioners filed exceptions, arguing that the referee erred in failing to consider petitioners' comparables. The MTT entered a final opinion and judgment on January 11, 2013, adopting the referee's proposed order and concluding that the assessed TCV for petitioners' Milford Road property was \$140,000 for tax year 2012. The MTT denied petitioners' motion for reconsideration.

Petitioners filed a claim of appeal on March 20, 2013. The appeal was consolidated with Docket 313119 "to advance the efficient administration of the appellate process." *Allemon v*

Rose Twp, unpublished order of the Court of Appeals, entered April 3, 2013 (Docket Nos. 313119 and 315306).

II. ANALYSIS

A. PETITIONERS' PROCEDURAL CLAIMS

Petitioners argue that they should have been permitted to conduct discovery and that their claim on the Milford Road property should have been moved from the Small Claims Division to the full tribunal. We disagree on both counts.

In the Milford Road case, petitioners argued that two separate properties adjoining their property had conditions that rendered them public nuisances and that the TCV should have been reduced based on the devaluation of their property as a result of the nuisances. To that end, petitioners served two sets of interrogatories on five township board members, seeking “to gather evidence from Rose Township elected officials, and from its employees, agents, representative, or persons who may testify on the party’s behalf who are aware of the Rose Township Ordinances, and the public nuisances located adjacent to, and near the subject property.” The first set contained 442 interrogatories and the second set contained 202 interrogatories. Thereafter, petitioners sought to remove the matter from Small Claims to the entire tribunal. The MTT denied petitioners’ motion to transfer because notice of the hearing had already been sent to the parties and the answers would be irrelevant.

The MTT is allowed to promulgate its own rules of practice and procedure. MCL 205.732(d). Proceedings in the MTT are governed by Tax Tribunal rules. See 2011 AC, R 792.10201 (“These rules govern the practice and procedure in all cases and proceedings before the tribunal.”). The instant petition was filed in the MTT’s Small Claims Division. Discovery in the Small Claims Division is by leave of the tribunal only. 2011 AC, R 792.10261. Petitioners filed their petitions in the Small Claims Division and, therefore, had no right to discovery except as granted by the MTT.

In denying petitioners’ motion for reconsideration, the MTT noted:

Contrary to Petitioner’s contentions, Petitioner did not file a “Motion for Interrogatories.” Rather, Petitioner submitted discovery requests to Respondent on August 27, 2012. There is, however, no discovery in the Tribunal’s Small Claims Division except by leave of the Tribunal and Petitioner did not file a motion requesting such leave until October 5, 2012, and no order has been issued by the Tribunal granting leave to conduct discovery. In that regard, Respondent was not required to respond to the discovery requests. Further, the requests are, as indicated in the October 5, 2012, [order] for the most part, irrelevant, as the underlying issues in this case relate to the subject property’s true cash and taxable values, and Petitioner has the burden of establishing those values under MCL 205.737, through the submission of affirmative evidence of value.

Although petitioners titled their papers “First Motion for Interrogatories and Request for Production,” the papers were actually two sets of interrogatories directed at respondent’s

employees, agents and representatives. Petitioners never requested leave from the MTT, and such leave was never granted. Therefore, there was no duty to respond on the part of those who received the interrogatories.

Nor were petitioners entitled to a transfer to the full tribunal. 2011 AC, R 10273, provides, in relevant part:

- (1) A party may, by motion and notice to the opposing party or parties, request a transfer of the proceeding from the small claims division to the entire tribunal.
- (2) If the motion is filed with the tribunal after the notice of hearing in the proceeding has been issued by the tribunal, the parties shall appear at the hearing and be prepared to conduct the hearing, unless otherwise provided by the tribunal.

Petitioners filed their motion only after the notice of hearing was issued and, therefore, were not entitled to removal.

B. PETITIONERS' SUBSTANTIVE CLAIMS

Petitioners argue that the MTT erred in assessing the TCV for their Tipsico Lake property for tax years 2011 and 2012 and also erred in assessing the TCV for their Milford Road property for tax year 2012.

Our review of a final decision of the MTT is limited. Because fraud is not alleged in this case, we review the tribunal's decision for misapplication of the law or adoption of a wrong principle. The MTT's factual findings are conclusive if they are supported by competent, substantial, and material evidence on the whole record. Substantial evidence is any evidence that reasonable minds would accept as sufficient to support the decision. Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. [*Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676; ___ NW2d ___ (2013), slip op p 7 (internal quotation marks and citations omitted).]

An appellant bears the burden of proof in an appeal from an order of the MTT. MCL 205.737(3); *Podmajersky v Dep't of Treasury*, 302 Mich App 153; 838 NW2d 195 (2013), slip op pp 4-5.

"As used in this act, 'true cash value' means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." MCL 211.27(1). "In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction." MCL 211.27(6).

In *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379; 576 NW2d 667 (1998), this Court explained the process of arriving at the TCV:

The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances. True cash value is synonymous with fair market value. The burden of proof is on the petitioner to establish true cash value. However, proceedings before the Tax Tribunal are original and independent and are considered de novo . . . The Tax Tribunal has a duty to make its own, independent determination of true cash value. The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value.

The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value. Regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell. [*Id.* at 389-390 (internal citations omitted).]

1. THE TIPSICO LAKE PROPERTY

Petitioners argue that they paid \$160,000 and that the purchase price minus the cost of repairs was the TCV of the property. However, "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. In determining the true cash value of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction." MCL 211.27(6).

For tax year 2011, petitioners offered a number of comparables as evidence of TCV, but the MTT determined that the comparables were not the best evidence of value because the properties were not adequately adjusted to the subject property. Instead, the MTT determined that petitioners' 2010 appraisal was the best evidence of the property's TCV. Given that petitioners offered the appraisal before the Board of Review when it originally protested the assessments, it cannot be said that the MTT's reliance on the appraisal was unreasonable. The MTT's finding as to the TCV for year 2011 was clearly supported by competent, substantial, and material evidence on the whole record.

For tax year 2012, the MTT rejected the valuation evidence submitted by both parties, finding that respondent's late-submitted evidence could not be considered and that petitioners' comparables were not sufficiently similar to the subject property to be relevant for valuation. Instead, the MTT took the TCV from 2011 (\$231,000) and reduced that amount by 2.4275%, which was the rate of market change (\$225,390). "[T]he Tax Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so." *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 640; 806 NW2d 342 (2011). The MTT's highly logical approach of relying on the

property's assessment history to determine TCV for tax year 2012 was clearly supported by competent, substantial, and material evidence on the whole record.

Petitioners' contention that the TCV's impaired their right to contract must be rejected.

U.S. Const., art. I, § 10 states, in part: "No State shall ... pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility." Similarly, Const. 1963, art. 1, § 10 provides: "No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted." . . . It has been said that the purpose of the Contract Clause is to protect bargains reached by parties by prohibiting states from enacting laws that interfere with preexisting contractual arrangements. [*Wells Fargo Bank, NA v Cherryland Mall Ltd Partnership (On Remand)*, 300 Mich App 361, 371-372; 835 NW2d 593 (2013) (internal quotations marks and citation omitted).]

Petitioners' reliance on these constitutional provisions is misplaced. No law has been enacted. Additionally, the mere assessment of a TCV did nothing to impair the contractual agreement between petitioners and the home's sellers.

In conclusion, the MTT did not err in assessing the TCV for petitioners' Tipsico Lake property for tax years 2011 and 2012. Because of the flawed evidence they submitted, petitioners did not meet their burden of establishing the TCVs of the property. The MTT's conclusions were based on competent, substantial and material evidence. Additionally, there was no impairment of contract.

2. THE MILFORD ROAD PROPERTY

The MTT did not err in assessing petitioners' Milford Road property at a TCV of \$140,000 for tax year 2012.

Petitioners' property was originally assessed a TCV of \$153,840 for tax year 2012. The Board of Review reduced the TCV to \$140,000. In the small claims action, petitioners argued that the TCV should have been \$117,710 while respondent argued that the TCV was properly set at \$140,000.

The hearing referee pointed out that petitioners had listed their property on Craig's List on two separate occasions. The first listing indicated "\$140,000/3br-1811ft – Come Live in a Blighted Area (Holly)" and describes the adjoining neighbor as having several junk vehicles on the property along with the neighbor to the north who operates a commercial construction business." The second posting advised "\$117,000-3br—1800 ft—Full Brick Ranch Mechanics Dream Garage w/Walkout on 5 acres w/Pond (Holly)." Although petitioners argued that the second posting resulted in four inquiries and the first had none, the referee concluded that the "Craig List postings are not reliable indicators of the true cash value of the subject property." The referee also rejected petitioners' comparables, which were either short sales or significantly inferior to the subject property. "Petitioner's comparables are not reliable indicators of value as they are all distressed properties and Petitioner's adjustments do not appear to be market based." Nor was a 2010 appraisal a reliable indicator of value because the appraisal was prepared two years prior. The referee also concluded that "Petitioner failed to provide sufficient evidence that

the neighboring property negatively impacts the subject property.” The referee concluded that “Respondent’s sales comparables support the current assessed and taxable values of the subject property.”

In their exceptions, petitioners argued that the referee erred in failing to consider petitioners’ comparables. Petitioners claimed that, given the housing market, the only comparable sales were those involving foreclosure, short sales, and bankruptcies and that those distressed sales were nevertheless valid sales that should have been taken into consideration. Petitioners pointed to their other case involving the Tipsico Lake property where the MTT accepted an appraiser’s use of short sales and foreclosures. Petitioners further argued that the home did not have air conditioning and did not have two and one-half baths. In fact “this was a laundry room that just happens to have a toilet in it.” Comparable #4 was a foreclosure, but petitioners urged that, as an adjoining property to the subject property, it was entitled to more weight than the comparables offered by respondent.

The MTT adopted the referee’s proposed order:

The Tribunal has considered the exceptions, response and the case file and finds that the Hearing Referee properly determined that Petitioners’ 2010 appraisal was not a reliable indicator of value for the 2012 tax year under appeal. In addition to containing sales well outside the relevant time frame for a 2012 valuation, the appraisal used only 1 arms length sale and there was no indication that the appraiser inspected the bank sales or verified the condition of these sales. Contrary to Petitioners’ assertions, the Tribunal is not forced to accept the value given in an appraisal submitted by a party. The Tribunal is required to make and [sic] independent determination of value, utilizing the best and most reliable evidence. Petitioners’ 2010 appraisal is neither the best nor most reliable indicator of value for the 2012 tax year. Further, any decision by another hearing referee in a Small Claims proceeding is not precedential and the Tribunal is not bound to adopt Petitioners’ appraisal in this case because a hearing referee adopted an appraisal value in a different case. The Tribunal is not an “appellate court” and any request by Petitioners for appellate review “to set a precedent” must be made to the Court of Appeals.

In regard to Petitioners’ comparables, the Hearing Referee found that the adjustments did not appear to be market based and that the comparables were all distressed properties. The Tribunal has reviewed the comparables and agrees with this determination. While Petitioners may have stated that three of the sales were valid, Respondent has stated that two were short sales and one was purchased with an FHA repair loan. The Hearing Referee found Respondent’s testimony regarding the sales to be persuasive. In addition, Petitioners’ comparables #3 and #4 were sold in 2010, and again, would not be the best indicators of value for a 2012 appeal. The Tribunal finds that comparables #1 and #2 were sold under distressed circumstances and Petitioners’ have failed to explain or support the adjustments made. These two comparables are not the most reliable indicator of value for 2012.

In addition to the property record card, Respondent provided a sales comparison analysis with three 2011 sales. The adjusted sale prices ranged from \$146,800 to \$177,000, all above the value of \$140,000 determined at the March Board of Review (original assessment was \$153,840). Respondent is not requesting an increase in value above the Board of Review determination and the Tribunal does not find that such an increase is warranted. The Tribunal does note an inconsistency between Petitioners' statements, the appraisal and the property record card. The appraisal indicates the presence of air conditioning and an additional ½ bath that are not being assessed on the record card. Petitioners have stated that there is no air conditioning, but have acknowledged the existing [sic] of an extra toilet and possibly a sink in the laundry room. Respondent was not permitted to do an inspection to determine the accuracy of the information regarding the air condition [sic] or additional ½ bath. The Tribunal finds that there is insufficient information to determine whether the subject property should be assessed for the air condition [sic] and ½ bath indicated by Petitioners' appraisal. Rather, the Tribunal finds that Respondent's sales support a finding that the subject property was not over-valued for 2012. As such, the Tribunal finds that the value as established by the Board of Review should be affirmed.

The MTT did not err in assessing the TCV for petitioners' Milford Road property for tax year 2012. Because of the flawed evidence they submitted, petitioners did not meet their burden of establishing the TCVs of the property. The MTT's conclusions were based on competent, substantial and material evidence.

Affirmed.

/s/ Henry William Saad

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly